

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

DENNIS RAY RIGSBY, JR,)
)
)
 Plaintiff,)
)
)
v.) **No. CIV-21-915-R**
)
)
ANDY BESHEAR, et al.,)
)
)
 Defendants.)

ORDER

Before the Court is Plaintiff's timely objection to the November 23, 2021 Report and Recommendation issued by United States Magistrate Judge Suzanne Mitchell, wherein she recommends the Court dismiss the action for lack of venue, failure to state a claim, and lack of standing. (Doc. No. 7). Plaintiff's timely objection gives rise to this Court's obligation to undertake a de novo review of those portions of the Report and Recommendation to which Plaintiff makes specific objection. Having conducted this review, the Court finds as follows.

Judge Mitchell's Report and Recommendation sets forth the factual allegations from Plaintiff's Complaint, and the appropriate standard for screening the Complaint under 28 U.S.C. § 1915A. Judge Mitchell concludes, properly, that venue does not lie in this District for Plaintiff's claims against the Governor of Kentucky. Plaintiff does not address this conclusion in his Objection, stating, "Plaintiff don't know the law or how to do the process to get his rights and relief for violations." Plaintiff's lack of legal knowledge does not

render venue appropriate in this Court for his claim against the Governor of Kentucky.

Accordingly, this portion of the Report and Recommendation is adopted.

Judge Mitchell next concludes that the case against Governor Beshear should be dismissed rather than transferring the action to the Eastern District of Kentucky, where venue would be proper.¹ The Report and Recommendation concludes Plaintiff's official capacity claim against Defendant Beshear is barred by the Eleventh Amendment and that with regard to the individual capacity claim, Plaintiff fails to state a claim. In his objection, Plaintiff requests that the Court not dismiss the official capacity claim against the Governor, but he presents no basis for avoiding Eleventh Amendment immunity. With regard to the individual capacity claim against Governor Beshear, Plaintiff states "Plaintiff has not/never was in a failure to state a claim, 'only' in individual capacity court may dismiss." Doc. No. 8, p. 1. The Court is unable to discern whether Plaintiff is agreeing that dismissal of the individual capacity claim is appropriate; regardless, Judge Mitchell's Report and Recommendation appropriately addresses the claim and properly recommends dismissal thereof.

Finally, Judge Mitchell recommends dismissal of Plaintiff's claims against the United States for lack of standing. Plaintiff does not directly object to Judge Mitchell's conclusion that he lacks standing under Article III of the Constitution and nothing in his objection provides a basis for rejection of the Report and Recommendation.

¹ In his objection Plaintiff requests that the Court change venue. (Doc. No. 8).

For the reasons set forth herein, the Report and Recommendation is ADOPTED in its entirety. Plaintiff's Complaint is DISMISSED WITHOUT PREJUDICE. His Motion for Leave to Proceed In Forma Pauperis (Doc. No. 2) is DENIED AS MOOT.

IT IS SO ORDERED this 8th day of December 2021.



DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE